

Introduced by Senator Galgiani

January 28, 2015

An act to amend Sections 10159.5, 10159.6, and 10159.7 of the Business and Professions Code, relating to real estate licensees, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 146, as introduced, Galgiani. Real estate licensees: fictitious business names: team names.

Existing law provides for the licensure and regulation of real estate brokers and real estate salespersons by the Bureau of Real Estate headed by the Real Estate Commissioner. Existing law requires an applicant who desires to have his or her license issued under a fictitious business name to file with his or her application a certified copy of his or her fictitious business name statement. Existing law authorizes a responsible broker, as defined, by contract, to permit a salesperson to apply for a fictitious business name with the appropriate county, and to maintain ownership of a fictitious business name. Existing law defines a team name and provides, for purposes of the provisions described above, that a team name is not a fictitious business name if specified criteria apply.

This bill would provide that a team name is also not a fictitious business name for purposes of any other law when the criteria apply. This bill would make technical and clarifying changes to the provisions described above.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 10159.5 of the Business and Professions Code is amended to read:

10159.5. (a) Every person applying for a license under this chapter who desires to have the license issued under a fictitious business name shall file with his or her application a certified copy of his or her fictitious business name statement filed with the county clerk pursuant to Chapter 5 (commencing with Section 17900) of Part 3 of Division 7.

(1) A responsible broker may, by contract, permit ~~a~~ *the* salesperson to do all of the following:

(A) File an application on behalf of a responsible broker with a county clerk to obtain a fictitious business name.

(B) Deliver to the bureau an application, signed by the responsible broker, requesting the bureau's approval to use a county approved fictitious business name that shall be identified with the *responsible* broker's license number.

(C) Pay for any fees associated with filing an application with a county or the bureau to obtain or use a fictitious business name.

(D) Maintain ownership of a fictitious business name, as defined in paragraph (2) of subdivision (a) of Section 10159.7, that may be used subject to the control of ~~a~~ *the* responsible broker.

(b) (1) A salesperson using a fictitious business name authorized by subdivision (a), shall use that name only as permitted by his or her responsible broker.

(2) This section does not change a real estate broker's duties under this division to supervise a salesperson.

(c) A person applying to a county for a fictitious business name pursuant to subdivision (a) may file his or her application in the county or counties where the fictitious business name will be used.

(d) ~~Marketing-Advertising~~ and solicitation materials, including business cards, print or electronic media and "for sale" signage, using a fictitious business name obtained in accordance with subdivision (a) shall include the responsible broker's identity in a manner equally as prominent as the fictitious business name.

(e) Notwithstanding subdivision (b) of Section 10140.6, advertising, including print or electronic media and "for sale" signage, containing a fictitious business name obtained in accordance with subdivision (a) shall include the ~~salesperson's~~

1 name and license number of the salesperson who is using the
2 fictitious business name.

3 (f) Notwithstanding Section 10185, a violation of this section
4 is not a misdemeanor.

5 SEC. 2. Section 10159.6 of the Business and Professions Code
6 is amended to read:

7 10159.6. All of the following apply to use of a team name, as
8 defined in paragraph (5) of subdivision (a) of Section 10159.7:

9 (a) Notwithstanding subdivision (b) of Section 10140.6,
10 advertising *and solicitation materials* that ~~contains~~ contain a team
11 name, including print or electronic media and “for sale” signage,
12 shall include the licensee’s name and license number in all
13 advertising, and shall be displayed in a conspicuous manner.

14 (b) The responsible broker’s identity shall be displayed as
15 prominently and conspicuously as the team name in all advertising.

16 (c) The advertising ~~material~~ *and solicitation materials* shall not
17 contain terms that imply the existence of a real estate entity
18 independent of the responsible broker.

19 (d) Notwithstanding Section 10185, a violation of this section
20 is not a misdemeanor.

21 SEC. 3. Section 10159.7 of the Business and Professions Code
22 is amended to read:

23 10159.7. (a) For the purposes of this article, the following
24 definitions shall apply:

25 (1) ~~“Broker”~~ “Responsible broker’s identity” means the name
26 under which the *responsible* broker operates or conducts business
27 and may include a sole proprietorship or business entity name.

28 (2) “Fictitious business name” means a professional identity or
29 brand name under which activity requiring a real estate license is
30 conducted and the use of which is subject to approval by the bureau
31 pursuant to Section 10159.5.

32 (3) “Ownership of a fictitious business name” means the right
33 to use, renew, and control the use of a fictitious business name
34 obtained in accordance with Section 10159.5.

35 (4) “Responsible broker” means the broker responsible for the
36 exercise of control and supervision of salespersons under Section
37 10159.2, or a licensee subject to discipline under subdivision (h)
38 of Section 10177 for failure to supervise activity requiring a real
39 estate license. The supervision of a salesperson required under this

1 part *or any other law* is limited to regulatory compliance and
2 consumer protection.

3 (5) “Team name” means a professional identity or brand name
4 used by a salesperson, and one or more other real estate licensees,
5 for the provision of real estate licensed services. Notwithstanding
6 any other law, the use of a team name does not require that a
7 separate license be issued for that name pursuant to Section
8 10159.5. A team name does not constitute a fictitious business
9 name for purposes of this part *or any other law* if all of the
10 following apply:

11 (A) The name is used by two or more real estate licensees who
12 work together to provide licensed real estate services, or who
13 represent themselves to the public as being a part of a team, group,
14 or association to provide those services.

15 (B) The name includes the surname of at least one of the licensee
16 members of the team, group, or association in conjunction with
17 the term “associates,” “group,” or “team.”

18 (C) The name does not include any term or terms, such as “real
19 estate broker,” “real estate brokerage,” “broker,” or “brokerage”
20 or any other term that would lead a member of the public to believe
21 that the team is offering real estate brokerage services, that imply
22 or suggest the existence of a real estate entity independent of a
23 responsible broker.

24 (b) Nothing in this section changes a real estate broker’s duties
25 under this division to supervise a salesperson.

26 SEC. 4. This act is an urgency statute necessary for the
27 immediate preservation of the public peace, health, or safety within
28 the meaning of Article IV of the Constitution and shall go into
29 immediate effect. The facts constituting the necessity are:

30 In order to ensure that the law regarding “team names” is applied
31 consistently at the state and local level and that a “team name”
32 does not constitute a fictitious business name for purposes of any
33 law, it is necessary that this act take effect immediately.